Nos. 80-603, 80-677 and 80-678

In the Supreme Court of the United States

OCTOBER TERM, 1980

LOUIS J. BAKER, PETITIONER

v.

UNITED STATES OF AMERICA

RAY TURNIPSEED, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

HAROLD FARRIS, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioners were properly convicted under federal law for participating in gambling businesses located on Indian land.

2. Whether petitioners' convictions violated the Due Process Clause (Nos. 80-677 and 80-678).

3. Whether the district court properly instructed the jury on the reach of the state gambling laws and on the requisite intent to sustain a conviction (No. 80-603).

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-23a)[1] is reported at 624 F.2d 890.

JURISDICTION

The judgment of the court of appeals was entered on June 11, 1980. Petitions for rehearing were denied on August 14, 1980 (Pet. App. 1b-3b). The petition for a writ of certiorari in No. 80-603 was filed on October 10, 1980. The petitions for a writ of certiorari in Nos. 80-677 and 80-678 were filed on October 14, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Western District of Washington, petitioner Baker was convicted of conducting an illegal gambling business, in violation of 18 U.S.C. 1955, and of interstate travel to promote that unlawful activity, in violation of 18 U.S.C. 1952. He was sentenced to concurrent terms of six months' imprisonment and fined a total of $20,000. Following bench trials on stipulated facts, the eight other petitioners also were convicted of conducting an illegal gambling business.[2] Petitioners Farris, Powell, Ray Turnip-

[1] Except where otherwise indicated, "Pet. App." refers to the appendix to the petition in No. 80-603.

[2] Petitioners Farris and Powell were tried individually. Petitioner Satiacum was tried with two co-defendants, who did not appeal their convictions. The other five petitioners were tried together.

seed, Bertha Turnipseed and Mackenzie Turnipseed were sentenced to two months' imprisonment and fined $10,000. Petitioners Lockwood and Painter were sentenced to two years' probation and fined $3,000. The court of appeals affirmed the convictions (Pet. App. 1a-23a).[3]

Petitioners Farris, Satiacum, Bertha Turnipseed and Mackenzie Turnipseed are Puyallup Indians. Petitioners Baker, Powell, Painter, Lockwood and Ray Turnipseed are not. In 1977 and 1978, without any approval or license from the Washington State Gambling Commission, each petitioner was involved in the operation of one of three gambling casinos, the Indian House Casino, the American Indian Casino and BJ's Social Club Casino, on the Puyallup Indian Reservation near Tacoma and Seattle, Washington. These casinos featured blackjack, poker and dice, and had a clientele that included many non-Indians and out-of-staters (Pet. App. 4a-5a). The casinos were closed on April 24, 1978, following a raid by the FBI.

The Indian House Casino, which was owned by Farris, Powell and another non-Indian, opened in August 1977. Petitioner Baker began working at the casino in November 1977 and became the casino manager about six months later. The casino operated 24 hours a day with 30 to 80 employees, including floormen, pit bosses, and dealers. In early 1978, petitioners Farris and Baker traveled to Las Vegas, where they acquired some gambling paraphernalia, which they brought back with them to Washington. In January and March 1978, the Indian House had a

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[3] Judge Browning dissented from the affirmance of the convictions of petitioners Farris, Satiacum, Bertha Turnipseed and Mackenzie Turnipseed on the ground that they are Puyallup Indians (Pet. App. 17a-21a).

net monthly profit of over $60,000 (Stipulation of Facts and Agreement filed in the district court in No. CR78-40T).

Petitioner Satiacum owned and operated the American Indian Casino, which opened in March 1978 and also featured around-the-clock blackjack and high-stakes poker. When this casino was shut down the following month, its bank account revealed deposits in excess of $216,000 (Stipulation of Facts, No. CR78-52T).[4]

BJ's Social Club Casino opened in December 1976. Petitioner Bertha Turnipseed, the nominal owner of the casino, and her husband, petitioner Ray Turnipseed, were principally responsible for financing the casino's operations and purchasing the necessary gambling supplies and equipment. Their son, petitioner Mackenzie Turnipseed, supervised the casino's day-to-day operations and also helped manage its financial affairs. Petitioners Painter and Lockwood worked as pit bosses, supervising the casino's employees and overseeing the gambling activities, which went on twenty-four hours a day. Painter was also responsible for recruiting blackjack dealers.

When the casino first opened, it featured various kinds of poker games that were legal under Washington state law. After about six months, however, the casino switched to a form of poker that was unlawful under state law but more profitable for the "house." In late 1977, after poker profits had declined due to competition from nearby casinos, petitioners decided to limit BJ's gambling operations to

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[4] Petitioner Satiacum's two co-defendants, who were not Indians, worked in the casino overseeing the gambling activities.

blackjack. Accordingly, in January 1978, blackjack dealers were trained on the casino's premises and ten custom-made blackjack tables were installed.

During this casino's operations in 1978, approximately fifteen blackjack dealers, a "pit boss", a cashier, and a number of "kitchen girls" worked on each eight-hour shift. From 2:00 a.m. to 5:00 a.m., all ten of the casino's blackjack tables, each of which could accommodate ten players, were typically in operation. Each blackjack table could handle between approximately $300 and $400 an hour in wagers. On three different days in April 1978, a total of six undercover FBI agents played blackjack at BJ's. Stipulation of Facts and Agreement, No. CR78-76T.

ARGUMENT

1. Petitioners contend that their convictions were invalid because the gambling businesses that they conducted on Puyallup trust land were not prohibited by Washington state law. This contention was properly rejected by the court below. There being no conflict among the circuits, further review by this Court is not warranted.

The criminal jurisdiction of the State of Washington over Indians on Indian territory within the State is considered in detail in *Washington* v. *Yakima Indian Nation*, 439 U.S. 463 (1979). That decision sustained, as authorized by Pub. L. No. 280 (Act of Aug. 15, 1953, ch. 505, 67 Stat. 588-590), 1963 Wash. Laws ch. 36 (Wash. Rev. Code § 37.12.010 (1964)), which unilaterally assumed complete criminal jurisdiction for offenses committed by non-Indians on Indian lands within State boundaries but exempted—except for matters not here relevant—Indians on trust lands. It is thus clear that Washing-

ton's gambling laws apply to non-Indian activities on the Puyallup trust lands involved here. On the other hand, it is equally plain that the Puyallup petitioners could not be prosecuted under State gambling laws for their gambling activities there. In this context, the question presented is whether the casino operations, involving both members of the Tribe and outsiders, constitute "illegal gambling business[es]" under Section 1955 and "unlawful activit[ies]" under Section 1952.

In our view, the answer is not in doubt. There is no occasion here to decide whether or not the federal statutes underlying these prosecutions would apply to a wholly tribal gambling operation on trust land, catering only to members. For present purposes, it is enough to notice that the casino operations involved non-Indians and therefore violated State law. As Judge Kennedy's concurring opinion states (Pet. App. 21a-22a), "[t]he federal statute focuses on whether the business itself is 'a violation of the law of the State' " and each casino, viewed as "a single entity," plainly transgressed Washington's gaming prohibition.

It follows that all those who significantly participated in the illegal businesses were properly charged. The non-Indian petitioners, having directly violated State law, were plainly subject to the federal prosecution. Nor are the Indian petitioners exempt. It is not disputed that each of these "conduct[ed], finance[d], manage[d], supervise[d], direct[ed], or own[ed] all or part of [those] illegal gambling business[es]" (18 U.S.C. 1955(a)). Their immunity from State prosecution is therefore irrelevant. As this Court has observed, to sustain a conviction under Section 1955, "[t]he Government need not prove that

the defendant himself performed any act of gambling prohibited by state law. It is participation in the gambling business that is a federal offense, and it is only the gambling business that must violate state law." *Sinabria* v. *United States*, 437 U.S. 54, 70 (1978).

The related claim (80-677 Pet. 19-29) that Washington state law merely regulates, rather than prohibits, gambling is insubstantial. As the court of appeals correctly observed (Pet. App. 15a), "the Washington law against professional gambling is prohibitory despite a number of 'limited exceptions.'" See Wash. Rev. Code §§ 9.46.220, 9.46.198 (1977 & Cum. Supp. 1980);[5] cf. *United States* v. *Marcyes*, 557 F.2d 1361, 1364 (9th Cir. 1977).

2. Petitioners' claim (80-677 Pet. 13-19; 80-678 Pet. 15-19) that their convictions violated the Due

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[5] Wash. Rev. Code § 9.46.220 (1977) provides in relevant part:

> **Professional gambling as violation—Penalty.** Whoever engages in professional gambling, or knowingly causes, aids, abets, or conspires with another to engage in professional gambling, shall be guilty of a felony and fined not more than one hundred thousand dollars or imprisoned not more than five years or both * * *.

Wash. Rev. Code § 9.46.198 (Cum. Supp. 1980) provides:

> **Working in gambling activity without license as violation—Penalty.** Any person who works as an employee or agent or in a similar capacity for another person in connection with the operation of an activity for which a license is required under this chapter or by commission rule without having obtained the applicable license required by the commission under RCW 9.46.070(16) shall be guilty of a gross misdemeanor and shall, upon conviction, be punished by not more than one year in the county jail or a fine of not more than five thousand dollars, or both.

Process Clause on the grounds that they did not intend to violate state law and did not have fair notice that their conduct violated 18 U.S.C. 1955 is baseless. Intent to violate state law is not a necessary element of Section 1955. *United States* v. *Hawes*, 529 F.2d 472, 481 (5th Cir. 1976). Clearly, with respect to its application to the non-Indian petitioners, 18 U.S.C. 1955 is not vague, since they directly violated state law. Moreover, all of the petitioners were put on notice that their conduct fell within the ambit of Section 1955 by a 1976 ruling of the district court in a case against petitioner Satiacum's father that professional gambling operations on the Puyallup reservation violated the federal statute (see Stipulation of Facts, CR78-52T at 41).[6]

3. Finally, petitioner Baker contends (80-603 Pet. 8-9) that the district court erred in refusing to instruct the jury that the state gambling laws do not apply to Indians on Indian land, and that the government had to prove that he knew that his gambling activities violated state law. As the court of appeals observed (Pet. App. 17a), the applicability of state gambling law to the activities of Indians on Indian land is irrelevant to petitioner Baker's convictions, since he is not an Indian. Further, the district court did instruct the jury that Section 1955 requires "specific intent to facilitate an activity which the accused

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[6] The prior criminal action was dismissed when the defendants in that case consented to the entry against them in a civil action of the injunction reproduced at 80-677 Pet. App. A-3-1 to A-3-3 (Stipulation of Facts, CR78-52T at 41-42; Stipulation of Facts and Agreement, CR78-76T at 7-8). Contrary to petitioners' contention (80-677 Pet. 14-16), the injunction clarified, rather than "confused," the issue, by making clear that gambling on Indian land could violate federal law. See 80-677 Pet. App. A-3-2.

knew to be unlawful under state law" (Pet. App. 17a), which was a more favorable instruction than that to which the law entitled petitioner. See *United States* v. *Hawes, supra,* 529 F.2d at 481.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

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